HIGH COURT OF UTTARANCHAL AT NAINITAL

WRIT PETITION No.1003 of 2006 (MS)

1. Shiv Shankar Yadav s/o Sri Bhagwan Deen Yadav
2. Ram Sanchi Yadav s/o Sri Bhagwan Deen Yadav
   Both residents of Pathak Niwas, Gandhi Colony,
   Bhowali, District Nainital .....Petitioners

Versus

1. District Judge, Nainital
2. Kamla Negi w/o Sri K.S. Negi, R/o Room No.13/10
   Pathak Niwas, Gandhi Colony, Bhowali, District Nainital
   .....Respondents

Sri S.S. Yadav, Advocate in person for the petitioners
Standing Counsel for the respondents.

Dated: 02.08.2006

Hon'ble Rajesh Tandon, J.

Heard Sri S.S. Yadav, Advocate in person for the petitioners and Standing Counsel for the respondents.

By the present writ petition, the petitioner have prayed for a writ mandamus directing the respondent no. 1 to dispose of the appeal No. 36 of 2006 and further writ of mandamus directing the respondent no.2 no to create any hindrance in the repairing and maintenance etc. work of his building, retaining wall, staircase and boundary wall.

The grievance of the petitioners in that in a suit filed by the respondent an undertaking was given by him that he will not interfere in the rasta and, therefore, injunction order was passed on the said undertaking. The petitioners apprehend that on the grab of injunction order, the respondent no.2 will

unnecessarily harass him and she along with her family members is creating obstructions in the construction/repairing work carrying on by the plaintiffs on his buildings, which he has purchased by virtue of sale deed dated 22.8.2005.

It made clear that so far as the rasta is concerned, undertaking has already been given by the petitioner. The respondent no. 2 has no concerned with other part of the property, except one room, which is in her possession and passage to the said room. Thus the respondent no.2. has no right to interfere in possession of the petitioners over the property and maintenance/repair work being carried out by them, under the grab of alleged injunction order. Further any finding recorded by the trial Court at the time of disposing of the injunction application, shall not be binding while deciding the suit finally on merit.

The petitioners have submitted that due to pendency of appeal before the District Judge, Nainital free hold proceeding could not be completed in his favour.

In view of the above, respondent no.1 is directed to decide Civil Appeal No.36 of 2006, Ram Sanehi & another vs. Kamala Negi, within a period of three moths, after obtaining certified copy of this order. However, the respondent no.2 shall not create any hurdle in the repair/construction work, if any, being carried out by the petitioners in the property.

Accordingly, writ petition is allowed. No order as to costs.

(Rajesh Tandon, J.)

Dated:02.08.2006

*Dhyani